IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Contempt Petition No. 22 of 2005

Harish Chandra Pandey
S/o Late Ganga Dutt Pandey
Village- Paye
P.O. – Garur (Baiznath) ….Petitioner

Vs.

Sri Jeewan Singh Hayanki
Additional District Education Officer
Bageshwar …..Respondents

Shri M.C. Bhatt, learned counsel for the petitioner.
None for the respondents.

Hon. P.C. Pant, J.

Heard learned counsel for the applicant.

This contempt petition, is filed by the petitioner, complaining wilful disobedience of order dated 19.07.2000, passed by the Allahabad High Court in Civil Misc. writ petition No. 29635 of 2000. The said impugned order of the Allahabad High Court, reads as under:-

"Having heard learned counsel for the petitioner, I find no ground made out for interference under Art. 226 of the Constitution of India. The petitioner's father died in harness in the year 1978. The petitioner was minor at that time. He has claimed for compassionate appointment after a span of 22 years of the death of the employee. The limitation within which an application on seeking compassionate appointment can be filed in five years. An application filed beyond the period is liable to be rejected on the ground of delay.

It may, however, be observed here that in view of the proviso to Rule 5 (1) of the U.P. Recruitment of dependants of Government Servants dying in harness Rules, 1974, inserted by notification dated October 13, 1993, the State Government is clothed with the power to relax the rule of limitation in appropriate cases in order to do complete justice. Accordingly, the petitioner may approach the State Government for appropriate orders under the proviso to Rule 5 (1) of the Rules. It goes without saying that in case any such application is moved by the petitioner, the same shall be considered and disposed of at the level of the State Government expeditiously, if possible, within a period of two months from the date of receipt of the application along with a certified copy of this order.

The petition is disposed of in terms of the above direction."

Above order itself shows that Allahabad High Court did not grant any relief to the petitioner. It only observed that since the petitioner has sought appointment under U.P. Recruitment of dependants of Government Servants dying in harness Rules, 1974, after five years of death of his father as such, under the rules, he could not have been given the appointment. It is further observed, as aforesaid that in view of the amendment in the proviso to Rule 5(1) of aforesaid rules, under the notification dated 13.10.1993, that the State Government is empowered to relax the Rule of Limitation. As such, this Contempt Petition against Sri Jeewan Singh Hayanki, Additional District Education Officer (Basic), Bageshwar, is misconceived because he is not representative of the Government, who can relax the period, provided under the Rules. Rather in the counter affidavit, the respondent has stated categorically that he himself has vide his letter dated

02.02.2005, to higher authorities to issue directions regarding the relaxation on the aforesaid point. In view of these facts, the petitioner should have moved the representation to the government which was competent to relax the period of five years, as mentioned in the aforesaid rules.

Therefore, for the reasons as discussed above, the respondent Sri Jeewan Singh Hayanki, Additional District Education Officer (Basic), Bageshwar, has not committed any willful disobedience of the court's order, on his part. Therefore, the notices are discharged and the contempt petition is dismissed.

(Prafulla C. Pant, J.)

Dt. 25.07.2005
Sweta